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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re

GABRIEL TECHNOLOGIES CORP. et al.,

Debtors.

E.I.N.s 22-3062052; 20-1711149

Case No. 13-30340 - DM
(Case no. 13-30341)

Chapter 11

(Jointly Administered)

Date: September 10, 2013
Time: 1:00 p.m.
Court: Courtroom No. 22
235 Pine Street, 22nd Floor
San Francisco, CA
Judge: Honorable Dennis Montali

**DEBTORS' MEMORANDUM IN SUPPORT OF SECTION 305 SUSPENSION OF
PROCEEDINGS PENDING OUTCOME OF QUALCOMM LITIGATION APPEAL**

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1 GABRIEL TECHNOLOGIES CORPORATION (“Gabriel”) and TRACE TECHNOLOGIES,
2 LLC (“Trace”), the debtors-in-possession herein (collectively, the “Debtors”), by and through their
3 undersigned counsel, file this Memorandum pursuant to Sections 105 and 305(a) of the United States
4 Bankruptcy Code (the “Bankruptcy Code”).

5 **I. INTRODUCTION**

6 In these chapter 11 cases, the Debtors have promptly proposed a plan of reorganization (the
7 “Plan”) with the active support of all of their creditor constituencies other than their principal
8 antagonist, Qualcomm Incorporated (“Qualcomm”). The Plan provides for the restructuring of the
9 Debtors’ secured and unsecured obligations, for the funding of additional financial support for the
10 Debtors once reorganized, and the continued prosecution of the Debtors’ intellectual property claims
11 against Qualcomm. In particular, the Plan allows the Debtors to prosecute their pending appeals (the
12 “Debtors’ Appeal”) in the Federal Circuit Court of Appeals (the “Federal Circuit”) from summary
13 judgment entered against the Debtors in their litigation against Qualcomm in the United States
14 District Court for the Southern District of California (the “Qualcomm Litigation”), and to fund the
15 resumed prosecution of that litigation in the event of a successful outcome of the Debtors’ Appeal.

16 Rather than rely on its rights and defenses as appellee in the Debtors’ Appeal (an appeal that
17 Qualcomm claims is frivolous and certain to fail, and yet seeks aggressively to avoid), Qualcomm has
18 twice attempted to derail the Debtors’ reorganization efforts by filing voluminous, serial motions,
19 first to convert the chapter 11 cases to chapter 7 (the “Conversion Motion”), and then to reclassify
20 tens of millions of dollars of promissory notes, secured and unsecured, into equity interests (the
21 “Reclassification Motion”). The Conversion Motion, which the Court described as “long on
22 rhetoric,” was denied, and even though the Court’s denial of the motion was clearly interlocutory,
23 Qualcomm filed an immediate appeal. Accordingly, the Debtors filed a motion to dismiss the appeal,
24 and on August 30, 2013, the United States District Court for the Northern District of California
25 granted the Debtors’ motion and dismissed Qualcomm’s appeal. The Debtors submit that the
26 Reclassification Motion, if heard by the Bankruptcy Court on its merits, will be denied as well, for
27 the reasons set forth in the Debtors’ opposition papers.

28 At the initial hearing of the Reclassification Motion, the Bankruptcy Court expressed the view

1 that consideration of Qualcomm's voluminous motions was, in the Court's words, "a gigantic waste
2 of time," inasmuch as the outcome of the bankruptcy cases ultimately depended on the result of the
3 Debtors' Appeal, regardless of the disposition of Qualcomm's motions, and that the cost of continued
4 litigation in the Bankruptcy Court while awaiting the disposition of the appeal may not be warranted.
5 On that basis, the Bankruptcy Court directed the parties to express their respective views of the
6 prospect of suspension of the chapter 11 cases while waiting for an outcome of the Debtors' Appeal,
7 pursuant to Section 305 of the Bankruptcy Code.

8 At that hearing, the Debtors, through counsel, expressed their only reservation with regard to
9 suspension of the chapter 11 cases, *to wit*, that the grand bargain reached among all of the Debtors'
10 creditor constituencies (other than Qualcomm), as reflected in the Plan, not be lost in the event of
11 suspension, due to the consequent delay in confirmation of the Plan. However, as reported below,
12 that concern has since been alleviated, as the Debtors, Northwater Intellectual Property Fund, L.P. 3A
13 ("Northwater") and the Official Committee of Unsecured Creditors appointed herein (the
14 "Committee") have agreed that, notwithstanding any suspension of the chapter 11 cases, upon
15 resumption of the cases' active administration, they will each support confirmation and
16 implementation of the Plan despite any delays that result from such suspension.

17 With that agreement now in place, the Debtors now fully support suspension of their chapter
18 11 cases pending an outcome of the pending Debtors' Appeal. Further, for the reasons set forth
19 below, the Debtors submit that such suspension is fully warranted and permissible under the
20 provisions of Section 305 of the Bankruptcy Code.

21 **II. STATEMENT OF FACTS**

22 The following facts are established by the record of the Court, prior declarations filed by the
23 Debtors with respect to the Conversion Motion and the Reclassification Motion, and the declarations
24 of Merle C. Meyers (the "Meyers Declaration") and Michael Salzman (the "Salzman Declaration")
25 filed concurrently herewith:¹

- 26 1. On February 14, 2013 (the "Petition Date"), each of the Debtors commenced a chapter

27 ¹ For the sake of brevity, the Debtors will not repeat the facts established earlier in their oppositions to the Conversion
28 Motion and Reclassification Motion, other than to summarize background facts to the extent relevant here, and the
Debtors hereby incorporate those oppositions and supporting declarations, docket nos. 90-94 and 161-163, for the record.

1 11 case by filing a voluntary petition for relief under the provisions of chapter 11 of the Bankruptcy
2 Code. Trace, a Nevada limited liability company, is the wholly owned subsidiary of Gabriel, a
3 Delaware corporation. Each of the Debtors remains in possession of its property and estate, no
4 trustee having been appointed, and by order entered on February 25, 2013, this Court granted the
5 Debtors' motions seeking joint administration of their chapter 11 cases.

6 2. Prior to the Petition Date, on October 24, 2008, the Debtors filed a complaint (as later
7 amended, the "Complaint") against Qualcomm, initiating a civil action entitled *Gabriel Technologies*
8 *Corporation, et.al. v. Qualcomm Incorporated, et. al.*, case no. 08CV1992 (the "Qualcomm
9 Litigation") in the United States District Court for the Southern District of California (the "District
10 Court"). The Complaint charged Qualcomm and others (collectively, the "Defendants"), with
11 misappropriating trades secrets, breach of contract, fraud and other claims.

12 3. Litigation ensued and in March 2010, the Debtors replaced their original counsel with
13 the law firm of Hughes Hubbard & Reed LLP ("HHR"), which, after its own due diligence and
14 research, agreed to represent the Debtors in the litigation on a contingency basis

15 4. In a series of orders culminating in an order dated March 13, 2012, the District Court,
16 granted partial summary judgment against all of the Debtors' trade secret claims based on a statute of
17 limitations defense. Then, on September 28, 2012, the District Court granted final summary
18 judgment against all of the Debtors' remaining claims (collectively, the "Qualcomm Judgment").
19 Additionally, on February 1, 2013, the District Court entered an order (the "Fee Order") granting the
20 Qualcomm's motion for attorneys' fees, and awarding to the Defendants the amount of
21 \$12,401,014.51 as against the Debtors, and the amount of \$64,316.50 as against local counsel.

22 5. The Debtors filed notices of appeal of the Qualcomm Judgment and the Fee Order.
23 Both appeals are pending in the Federal Circuit Court. On May 1, 2013, the Debtors filed their
24 opening brief in support of their appeal from the Qualcomm Judgment, case no. 2013-1058. On
25 August 9, 2013, the Debtors filed their opening brief in support of their appeal from the Fee Order,
26 case no. 2013-1205. By order of the Federal Circuit Court, the appeals were consolidated to the
27 extent that they will be treated as companion cases and assigned to the same appellate review panel.
28 Qualcomm's responses to the Debtors' opening briefs are due on October 8, 2013, with the Debtor's

1 reply brief due within 14 days of Qualcomm filing its brief. As set forth in the appellate briefs, the
2 Debtors believe that the Qualcomm Judgment, and the Fee Order that followed, are manifestly unjust
3 and legally improper, and that all should be overturned on appeal, following the Federal Circuit
4 Court's review of the District Court's rulings.

5 6. HHR has agreed to act as special counsel for the Debtors in order to prosecute the
6 Debtors' appeal from the Qualcomm Judgment, on a contingency basis, as well as to accrue out-of-
7 pocket costs without reimbursement during the appellate process. The Bankruptcy Court entered its
8 order approving HHR's retention on April 15, 2103 (docket no. 64). Separately, the law firm of
9 Chapin Fitzgerald LLP was retained by the Debtors to act as special counsel for the Debtors in order
10 to prosecute the Debtors' appeal of the Fee Order. The Bankruptcy Court entered its order approving
11 Chapin Fitzgerald LLP's retention on May 21, 2103 (docket no. 115). As disclosed in the Debtors'
12 application for approval of such retention, Chapin Fitzgerald LLP's fees in such engagement will be
13 advanced in their entirety by Northwater, as further advances of Northwater's prepetition secured
14 loan to the Debtors.

15 7. Michael Salzman, a partner in HHR, is the lead attorney with respect to the Debtors'
16 appeal from the Qualcomm Judgment. Whereas actual timing is uncertain at best, Mr. Salzman
17 estimates that oral argument of the Debtors' Appeal is likely to occur in early 2014, and that a
18 decision will be issued by the Court of Appeals for the Federal Circuit within roughly three to six
19 months thereafter.

20 8. The aggregate principal amount of claims against the Debtors, excluding the disputed
21 claim of Qualcomm, is in excess of \$13,000,000. With the inclusion of non-principal charges owing
22 under contractual terms to claimants, including agreed multiple returns of principal, those claims
23 exceed \$40,000,000. Those claims are both secured and unsecured and are described in further detail
24 in the Debtors' opposition to the Reclassification Motion.

25 9. As demonstrated by the monthly operating reports filed by the Debtors to date, cash
26 flow, whether positive or negative, is minimal, and there are no other material losses continuing. Nor
27 have the Debtors suffered material losses on a profit/loss basis. Other than the accrual of postpetition
28 attorneys' fees, both hourly and contingency liability, the Debtors' only postpetition losses to date

1 have involved disputed storage charges for its file servers, at the rate of \$2,422 per month.

2 10. On June 7, 2013, the Debtors filed an amended plan, the Plan (docket no. 119),
3 comprised of consensual (other than with Qualcomm) reorganization terms under which all creditor
4 groups will consent to impairments and the Debtors' primary lender, Northwater, will advance
5 additional funds, to prosecute the Qualcomm Appeal and to facilitate a favorable outcome for
6 unsecured creditors.

7 11. On June 11, 2013, the Debtors filed notice (docket no. 126) of a plan support
8 agreement (the "PSA") executed by the Debtors, the Committee and Northwater, pursuant to which
9 the parties agreed to support the Plan if certain conditions were met, including confirmation of the
10 Plan no later than September 30, 2013.

11 12. On June 26, 2013, in light of Qualcomm opposition that had delayed the Plan
12 confirmation process more than anticipated, Northwater, the Committee and the Debtors executed a
13 first amendment of the PSA, whereunder, *inter alia*, the deadline for confirmation was extended to
14 December 31, 2013. A copy of the first amendment of the PSA is attached to the Meyers Declaration
15 as **Exhibit "A."**

16 13. On August 7, 2013, in light of the Bankruptcy Court's comments during the July 30,
17 2013 hearing of the Reclassification Motion, representatives of Northwater, the Committee and the
18 Debtors met, agreed upon and executed a second amendment to the PSA (the "Second Amendment").
19 A copy of the Second Amendment is attached to the Meyers Declaration as **Exhibit "B."** Under the
20 terms of the Second Amendment, in the event of a suspension of the Debtors' chapter 11 cases, the
21 deadline for Plan confirmation has been extended to 180 days after such suspension has been
22 terminated.

23 14. Based on the execution of the Second Amendment, the Debtors now believe that any
24 delay caused by a suspension of the chapter 11 cases while the Debtors' appeal is progressing, will
25 not prejudice the Debtors' ability to confirm the Plan and to preserve the beneficial agreements
26 reached with creditors constituencies therein.

27 **III. DISCUSSION**

28 For the reasons set forth below, the Debtors submit that suspension of the Debtors' chapter 11

cases pursuant to Section 305(a) of the Bankruptcy Code, pending completion of the Debtors' Appeal, will be beneficial to all parties, including Qualcomm, and should be implemented forthwith.

A. **Section 305(a), In General**

Section 305(a) of the Bankruptcy Code states as follows:

The court, after notice and a hearing, may dismiss a case . . . or suspend all proceedings in a case under this title, at any time if ... the interests of creditors and the debtor would be better served by such dismissal or suspension.

11 U.S.C. § 305(a)(1). The decision to dismiss or suspend a case under Section 305(a) is discretionary and must be made on a case-by-case basis. *In re A & D Care, Inc.*, 90 B.R. 138, 141 (Bankr. W.D.Pa. 1988).

Most courts view Section 305 as an abstention provision, even though its language employs the terms "dismissal" and "suspension." See, e.g., *In re Pine Lake Village Apt. Co.*, 16 B.R. 750, 752 (Bankr. S.D.N.Y. 1982). Here, the Bankruptcy Court has suggested that it may abstain from, or suspend, all the proceedings in these chapter 11 cases. See also, *In re Pankau*, 65 B.R. 204, 206 n. 3 (Bankr. N.D. Ill.1986) (noting that dismissal or suspension under Section 305 refers to the entire bankruptcy case, not just a matter within the case). The Debtors believe that such a suspension, with the exception of routine administrative matters such as the filing of operating reports, consideration of settlements and retention of professionals, would be in the best interests of the estate and all of its creditors and other parties in interest.

Application of Section 305(a) is appropriate when the interests of the creditors and the debtor are best served by dismissal or suspension. *In re Mazzocone*, 200 B.R. 568, 575 (E.D.Pa.1996). The Ninth Circuit Court of Appeals applies a seven-factor test in determining whether to abstain by dismissal or suspension, as follows: (1) economy and efficiency of administration; (2) whether another forum is available to protect interests of both parties or there is already a pending proceeding in state court; (3) whether federal proceedings are necessary to reach just and equitable solution; (4) whether there is alternative means of achieving equitable distribution of assets; (5) whether debtor and creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in case; (6) whether non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with federal bankruptcy process; and (7) purpose

1 for which bankruptcy jurisdiction has been sought. 11 U.S.C. § 305(a)(1); *In re Marciano*, 459 B.R.
2 27, 47 (9th Cir. BAP 2011); citing *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455 (Bankr. S.D.N.Y.
3 2008). The bankruptcy court “must make specific and substantiated findings” based upon these
4 factors and conclude that the interests of the creditors and the debtor will be better served by
5 dismissal or suspension. *In re Gelb*, 2013 WL 1296790 *4 (B.A.P. 9th Cir. 2013) (quoting *In re*
6 *Macke Int'l Trade*, 370 B.R. 236 (B.A.P. 9th Cir. 2007).

7 While all factors are considered, the exact factors and the weight to be given each of them is
8 “highly sensitive to the facts of each individual case.” *In re Mazzocone*, 200 B.R. 568, 575 (E.D.Pa.
9 1996). For example, where there is a pending foreign insolvency proceeding, concerns of comity
10 must be taken into account and deference must be given to the foreign proceedings. *In re Compania*
11 *de Alimentos Fargo, S.A.*, 376 B.R. 427, 434 (Bankr. S.D.N.Y. 2007). Moreover, the Ninth Circuit
12 Bankruptcy Appellate Panel has held that “the test under section 305(a) is not whether dismissal
13 would give rise to a substantial prejudice to the debtor. Nor is the test whether a balancing process
14 favors dismissal. Rather, the test is whether both the debtor and the creditors would be ‘better
15 served’ by a dismissal.” *In re Eastman*, 188 B.R. 621, 625 (9th Cir. BAP 1995).

16 **B. All Pertinent Factors Favor Suspension Here.**

17 Each of the factors identified by the Ninth Circuit, to the extent pertinent to the circumstances
18 of these chapter 11 cases, support suspension of the cases pending the outcome of the Debtors’
19 Appeal. In particular:

20 **1. Efficiency of Administration**

21 There can be no doubt that suspension of the chapter 11 cases, pending an outcome of the
22 Debtors’ Appeal, may avoid substantial administrative expenses and time-consuming litigation. The
23 disposition of these chapter 11 cases depends ultimately on the outcome of the appeal, and on the
24 result of resumed prosecution of the Qualcomm Litigation in the event of reversal of the Qualcomm
25 Judgment. Many of the issues presently before the Bankruptcy Court in the Plan confirmation
26 process hinge upon the outcome of that litigation, and suspension of the cases while the appeal
27 process is completed may render many of those issues moot or better defined.

1 For example, Qualcomm has raised issues as to the feasibility of the Plan, and the likelihood
2 of recoveries by creditors, based on its argument that the Debtors' Appeal will fail. Whereas the
3 Debtors do not believe that those are valid confirmation issues, given the structure of the Plan,
4 awaiting the outcome of the Debtors' Appeal will certainly moot those issues – either the appeal will
5 succeed or it will not, resolving Qualcomm's objection.

6 As another example, Qualcomm has argued extensively in its Reclassification Motion that it
7 is entitled to challenge all note claims of creditors, in order to argue that those claims are in fact
8 equity. This is based not on Qualcomm's position as a defendant but rather as a purported creditor,
9 pursuant to the Fee Order. However, if the Debtors' Appeal is successful and the Fee Order is
10 vacated, Qualcomm will no longer be a purported creditor of the Debtors, and will have no standing
11 to argue for reclassification of other claims.

12 In fact, in the event that the Fee Order is reversed, as sought in the Debtors' Appeal,
13 Qualcomm may not have standing to challenge the Plan at all: At that point, Qualcomm will only be
14 a defendant in the resumed Qualcomm Litigation, and not a creditor of the Debtors. Without
15 standing as a creditor to object to the Plan, and with all other parties supporting confirmation of the
16 Plan, most or all confirmation issues will be eliminated and the Plan will likely be confirmed without
17 further delay or substantial expense.

18 Clearly, therefore, suspension of the chapter 11 cases, pending the outcome of the Debtors'
19 Appeal, will result in a more efficient administration of the Debtors' chapter 11 cases.

20 **2. Another Pending Forum**

21 There is of course another forum in which related matters are pending, namely the Federal
22 Circuit Court where the Debtors' Appeal is pending. While that forum cannot effectuate a
23 reorganization of the Debtors' financial affairs as contemplated in the Plan, the Federal Circuit Court
24 will certainly render a disposition of the pending appeals, with significant impact upon these chapter
25 11 cases. Suspending the chapter 11 cases until the Federal Circuit Court has done so is both sensible
26 from an administrative efficiency perspective, as described above, and sensible in the sense of a
27 logical sequence of issues to be resolved – before consideration of a reorganization plan that
28

ultimately contemplates resumed prosecution of the Qualcomm Litigation, it makes good sense to ascertain whether the Federal Circuit Court agrees that that litigation should be resumed.

The *Mazzocone* court took a similar approach, suspending the chapter 11 case for a finite period of time pending the outcome of litigation in another court. The *Mazzocone* court indicated that after a six-month period, the court would require the parties to provide the court with a written status report, and to appear before the court to provide a status report of state-court litigation and any other pertinent developments, at which time the court would decide how next to proceed. *In re Mazzocone*, 183 B.R. 402, 422 (Bankr. E.D. Pa. 1995).

A similar approach would sense here: Inasmuch as Mr. Salzman, HHR's lead attorney in the appeal, has estimated oral argument in early 2014, and a decision thereafter, the Debtors suggest that a suspension of the chapter 11 cases be accompanied by further status reports from the parties in June 2014.

3. Need for Federal Proceedings to Reach Solution

There is a need for the proceedings before the Bankruptcy Court, in order to resolve the Debtors' financial affairs through a confirmed reorganization plan. However, waiting first for a decision from the Federal Circuit Court with regard to the Debtors' Appeal will facilitate, not replace, the process before the Bankruptcy Court.

4. Alternative Means for Equitable Distribution of Assets

There is not an alternative means for equitable distribution of the Debtors' assets outside of the plan process, but, as stated, the process within the Bankruptcy Court can be facilitated by waiting for the Federal Circuit Court's rulings on the Debtors' Appeal before proceeding with any plan process.

5. Less Expensive Out-of-Court Arrangement

This is not a pertinent factor, inasmuch as there is no out-of-court process contemplated or possible, pending the outcome of the Debtors' Appeal.

6. Non-Federal Insolvency Proceeding

This too is not a pertinent factor, inasmuch as there is no state law proceeding to address the Debtors' insolvency and reorganization.

1 **7. Purpose of Bankruptcy Jurisdiction**

2 The purpose of the Bankruptcy Court's jurisdiction in these cases is to provide a means for
3 restructuring the Debtors' obligations, through a reorganization plan such as the Plan. Here, the Plan
4 provides for the restructuring of debts and the funding of the pending Qualcomm Litigation. Such
5 objectives are proper bases for Bankruptcy Court jurisdiction. See *In re Heritage Org., L.L.C.*, 375
6 B.R. 230 (Bankr. N.D. Tex. 2007). That purpose can be best served by suspending (but not
7 dismissing) the chapter 11 cases while the Debtors' Appeal is processed, after which the bankruptcy
8 process can be resumed with greater efficiency and with the resolution of many of the issues now
9 presented in the confirmation process.

10 **C. There is No Prejudice To Qualcomm.**

11 Qualcomm will undoubtedly argue that it would be prejudiced by the delay of a suspension of
12 the chapter 11 cases, but such an argument will not bear scrutiny because there is no real prejudice to
13 Qualcomm. In fact, Qualcomm will benefit from the suspension by a significant savings of litigation
14 costs.

15 If the chapter 11 cases are not suspended, Qualcomm will continue to file and prosecute
16 objections and motions attempting to derail the Debtors' confirmation objectives, as it has so far in
17 these cases. Those objections and motions will be expensive and time-consuming, and will be based
18 on Qualcomm's continuing stance that the Debtors' Appeal is frivolous and sure to fail, and that
19 Qualcomm is an indisputable judgment creditor. The Debtors will be compelled to respond to and
20 oppose each such motion and resistance by Qualcomm, at all parties' expense. But if, rather than
21 continue that battle, Qualcomm is forced by a suspension to wait until the Federal Circuit Court
22 decides the appeal, Qualcomm will have its arguments either proved or disproved without that heavy
23 cost – the appeal will either succeed or fail on its own, and the issues raised by Qualcomm in the
24 chapter 11 cases will be resolved either for or against Qualcomm's position. Either way, Qualcomm
25 will not be required to expend hundreds of thousands of dollars in paying lawyers to argue for points
26 that will be established, negatively or positively, by transpiring events. This is surely a benefit to
27 Qualcomm, as it is to the Debtors' estates.

28 At the same time, any delay in Qualcomm's enforcement of its rights as a creditor under the

1 Fee Order (assuming that the Fee Order is not vacated on appeal) will not prejudice Qualcomm
2 because there is nothing against which to enforce the Fee Order: The Debtors have few significant
3 assets other than their claims against Qualcomm, which presumably would become worthless if the
4 Fee Order were sustained and enforceable. Nor will the Debtors be expending significant resources
5 in the interim, if the Plan litigation is suspended, inasmuch as the Debtors' greatest expense is the
6 attorneys' fees that accrue in the course of their battles with Qualcomm. With a suspension, those
7 costs will be greatly reduced, and the appeal process will cost the Debtors virtually nothing – HHR
8 has agreed to continue to represent the Debtors on a contingency fee basis, and all of Chapin
9 Fitzgerald LLP's fees will be paid by Northwater.

10 Qualcomm has argued previously that any delay prejudices the Debtors' estates' ability to
11 pursue present and former directors and officers for purported malfeasance in prosecuting the claims
12 against Qualcomm. This is a red herring. First, any malfeasance claims are specious – the Debtors'
13 management pursued claims against Qualcomm based on unwavering and unqualified
14 recommendations by competent counsel and with the support and urging of the Debtors' lenders and
15 shareholders. Under those circumstances, any malfeasance claims would certainly be met by
16 compelling defenses of reliance upon counsel. Second, even if any malfeasance claims would have
17 merit, they would be based presumably on the findings of the Qualcomm Judgment and the Fee
18 Order, which have yet to be tested on appeal. Until the Debtors' Appeal is fully concluded, any
19 malfeasance claims will be left uncertain based on contentions that the Qualcomm Judgment and the
20 Fee Order were wrongly decided. Thus, any prosecution of malfeasance claims must await the
21 outcome of the Debtors' Appeal in any event. Third, a finite delay in prosecution of any such
22 malfeasance claims would not be prejudicial in any event – Qualcomm has not articulated any basis
23 for concluding that mere delay will impair any such claims, assuming that they have any merit at all.

24 It is thus clear that Qualcomm will not be prejudiced, and will in fact be benefited, by a
25 suspension of the chapter 11 cases as proposed by the Debtors.

26 **IV. CONCLUSION**

27 For the reasons set forth above, the Debtors respectfully submit that the Debtors' chapter 11
28 cases should be suspended pursuant to Section 305(a) of the Bankruptcy Code, pending the outcome

A. The Debtors and Qualcomm shall be directed to file status reports in June 2013, followed by a status conference at which the Bankruptcy Court can decide whether to continue or terminate the suspension;

B. During the suspension, the Debtors will be allowed to continue to file motions and applications with regard to routine administrative matters, including without limitation compromise motions under Rule 9019 of the Federal Rules of Bankruptcy Procedure, retention applications under Section 327 of the Bankruptcy Code, and motions regarding executory contracts under Section 365 of the Bankruptcy Code; and

C. At any time during the suspension, any party may bring a motion to terminate the suspension for cause, for cause based on events transpiring hereafter.

DATED: September 5, 2013

MEYERS LAW GROUP, P.C.

By /s/ Merle C. Meyers
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